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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,006	02/19/2004	Eick Niemeyer	414-35587-USCP	4322

44871 7590 08/25/2006

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HOUSTON, TX 77057

EXAMINER
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FITZGERALD, JOHN P

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/782,006	<b>Applicant(s)</b> NIEMEYER ET AL.	
	<b>Examiner</b> John P. Fitzgerald	<b>Art Unit</b> 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 13, 27, 28, 42 and 43 is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 8, 11, 16-20, 23, 26, 31-35 and 41 is/are rejected.
- 7) ☒ Claim(s) 2, 6, 7, 9, 10, 14, 21, 22, 24, 25, 29, 30, 36-40, 44 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

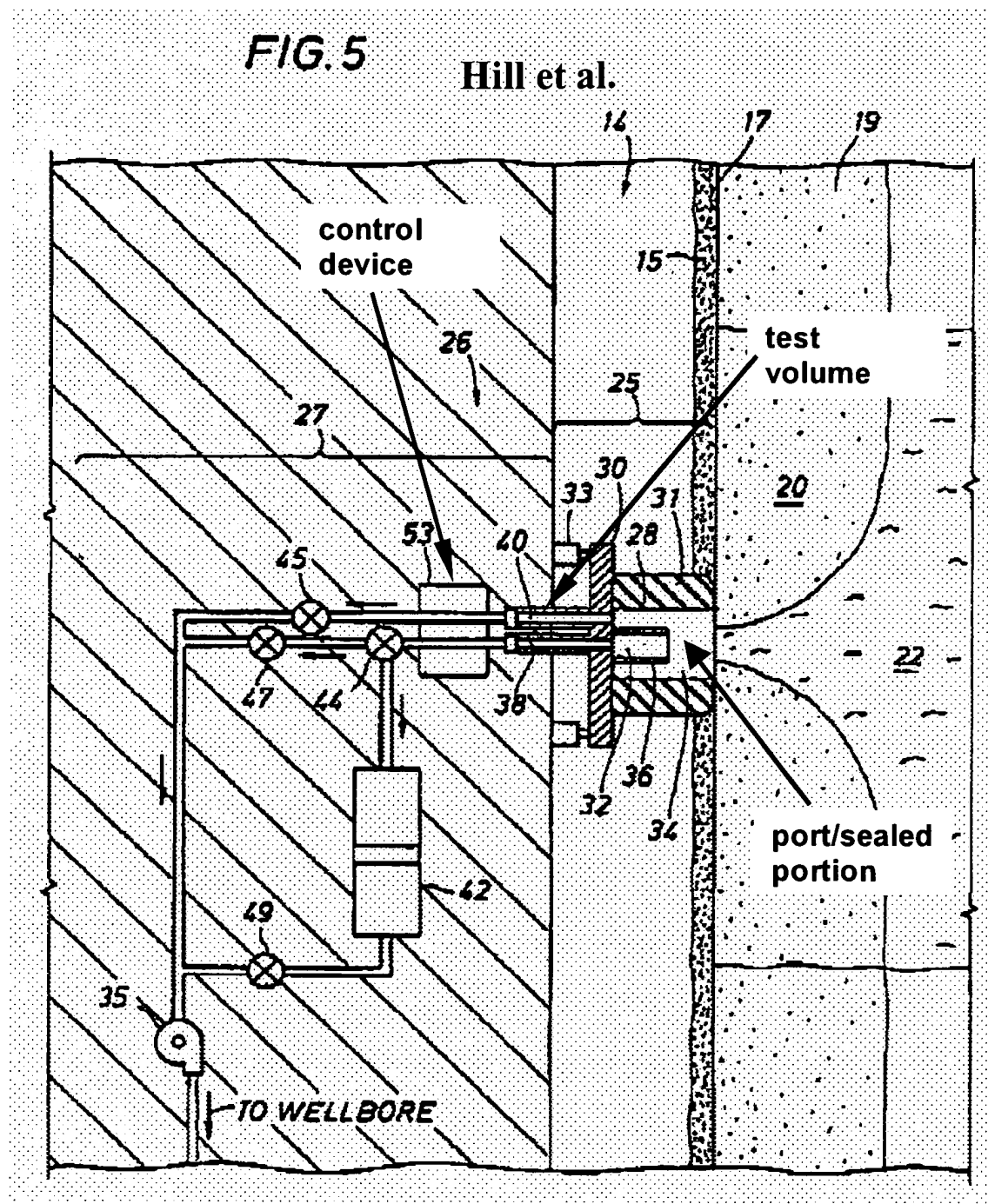
1. Applicant's arguments filed 15 June 2006 have been fully considered but they are not persuasive. Applicant's main argument is that the Hill et al. reference fails to disclose the determining of at least one characteristic (i.e. a characteristic that is indicative of a formation parameter) of the test volume during one or more of a first draw portion or second draw portion. The Examiner respectfully disagrees. The Hill et al. reference clearly discloses that the sampling rate can be adjusted and/or varied, thus providing at least two or more different "draw portions," thus clearly meeting the claimed limitation. Furthermore, the Hill et al. reference clearly states in the abstract that the "characteristics of the fluid passing through the channels/volumes may be measured," as well as a "contamination monitor" (claim 59) (measuring any type of contamination of fluid being sampled from the formation, for example, presence of invasion fluids or other undesired contaminants within the formation) thus meeting the claimed limitations of determining at least one characteristic indicative of a formation parameter. Furthermore, the apparatus disclosed by Hill et al. is clearly structurally capable of performing the claimed method limitations.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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3. Claims 1, 3-5, 8, 11, 16-20, 23, 26, 31-35 and 41 are rejected under 35 U.S.C. § 102(e) as being anticipated by US 6,964,301 to Hill et al. Hill et al. disclose a method and apparatus for determining in situ a desired formation parameter of interest (see Fig. 5 below) including all of the recited elements of the claims of a any conveyable tool into a well borehole (as recited in claims 17 and 32) (Hill et al.: col. 6, lines 7-20); a test unit (27) in the tool with a probe/port in fluid communication with the formation via packers or seals (as recited in claims 3, 4, 18, 19, 33 and 34) including a test volume (38, 40), a control/sensing device (53) for monitoring/determining at least one characteristic of the test volume (i.e. formation fluid parameters, e.g. contamination/composition, pressure, temperature (as recited in claims 11, 26 and 41) (Hill et al.: col. 11, lines 6-13); wherein the draw rate of the fluid into the test volume is controlled by the control device, capable of adjusting/altering the draw rate based on a measured/determined formation fluid characteristic (note, that includes increasing or decreasing during one or more of a first or second draw portion, as recited in claims 1, 8, 16, 23. and 38)(Hill et al.: col. 9, lines 1-53); the control device includes a variable rate pump (35) (as recited in claims 20 and 35); and a processor and controller following programmed instructions for control of the apparatus (as recited in claim 31) (note: a processor and programmed instructions are inherent features of any measurement device to measure/process and subsequently perform controlled operations based on the measured data/values/output, as disclosed by Hill et al.).



***Allowable Subject Matter***

4. Claims 12, 13, 27, 28, 42 and 43 are allowed over the Prior Art of record.
5. Claims 2, 6, 7, 9, 10, 14, 21, 22, 24, 25, 29, 30, 36-40, 44 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fitzgerald whose telephone number is (571) 272-2843. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams, can be reached on (571) 272-2208. The fax phone number for the organization where this

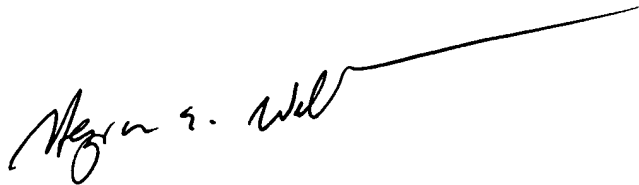
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application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JF

08/21/2006



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